

Queen's ferry
February 15. 1781.

UNTO THE RIGHT HONOURABLE,
The Lords of Council and Session,

*21st Feb.
1781.
Refused*

T H E
P E T I T I O N
O F

The Magistrates and Kirk-session of Queensferry,

HUMBLY SHEWETH,

THAT in the process against the petitioners, at the instance of the parish of Kirkcaldy, to which process the parishes of Largo and Dalmeny were made parties, your Lordships were pleased, on the 6th February 1781, to Feb. 6. 1781. pronounce the following interlocutor. " Upon report of Lord Ellick, and having advised the informations for the several parties, the Lords find, That the burden of maintaining and supporting Helen Reid and her children does lie upon the parish and town of Queensferry, and upon the heritors, kirk-session, magistrates, town-council, and community of said parish and town: Find the said parish and town of Queensferry liable in payment to the parish of Dalmeny in their expences, which the Lords modify to L. 3, 3 s. Sterling; and decern therefor, and for the expence of extract, as the same shall be certified by the collector's certificate; but find no other expences due to any of the parties: and remit to the Lord Ordinary to hear parties on the other points in the cause, and to do therein as he shall see just."

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This interlocutor the petitioners humbly beg leave to submit to your Lordships review; not that they intend to trouble the court with reconsidering all the points which were formerly stated: they were indeed advised, that the authority of statute, which provides, that the parish where poor persons are born shall have the burden of their maintenance, when the place of birth is clearly known, must be the rule; and therefore they cited the parish of Dalmeny. But your Lordships having, by former decisions, established it as a principle, That the burden of maintaining the poor should lie upon the parish where they had their last three years residence; and having, upon this occasion, again adhered to that principle; the petitioners shall say nothing upon that head, but shall confine themselves to this single question, Whether, upon the legal and rational construction of the last three years residence, the burden of maintaining this woman and her children should lie upon them, or upon the parish of Largo? and they hope to satisfy your Lordships of the latter proposition.

Helen Reid, the poor woman, or pauper, to adopt the concise English phrase, had such a residence in the parish of Queensferry as can be reckoned such only by the narrowest construction. Her husband Robert Muir was engaged in the precarious employment of driving the stage-coach between Edinburgh and the Halls, which last place is in the parish of Dalmeny; and the house in which his wife lived, and where he used also himself to come and sleep, is proved to have been upon the confines of the two parishes, so that it stands half in the parish of Dalmeny, and half in that of Queensferry; though indeed it appears, that what was occupied by them was in Queensferry. If therefore the parish of Largo pleads upon narrowness in point of time, the petitioners can plead upon narrowness in point of space.

As to the last three years residence of this poor woman, the fact is, that her husband became the coachman of Mr Durham of Largo, and that the residence of his family was in the parish of Largo for the last three years preceding this present process being brought.

The proof is short and distinct, and the whole of it shall now be laid before your Lordships.

“ John Selkrig feuer in Largo, aged 60 and upwards, depones,
 “ That Robert Muir coachman to Mr Durham of Largo, took a
 “ house from the deponent in the parish of Largo, and, with He-
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" len Reid his spouse and family, entered to the possession about
 " eight or ten days, or so, after the term of Whitsunday 1772,
 " for which they paid him rent from that term to Whitsunday
 " 1775 : That Robert Muir having gone to Edinburgh with his
 " master, was taken ill in the month of January 1775, and being
 " put into the Royal Infirmary there, died some time in that
 " month, or in the beginning of February, as the deponent was
 " informed. Depones, That Helen Reid his widow continued
 " with her children in the parish of Largo until the 4th day of
 " April same year, when she went to Kirkliston with her chil-
 " dren, alongst with her brother and sister, who came to Largo
 " parish for her : That before she went away, part of her furni-
 " ture was sold by roup, and part of it left in the house for pay-
 " ment of the defunct's debts, which was sold within a few days
 " after said 4th of April. *Causa scientiæ patet, &c.*

" Elisabeth Yule, spouse to the preceding witness, aged 50 and
 " upwards, depones, and concurs with the preceding witness in
 " *omnibus*, and gives the same cause of knowledge," &c.

Your Lordships then will be pleased to consider the question in
 this simple point of view, that if any person had in summer 1775
 asked Helen Reid, where her residence had been for the last three
 years, would not she have answered, In the parish of Largo? That
 would have been the plain and natural answer. And had she been
 desired to produce a certificate of her good character from the mi-
 nister of the parish where she last resided, would she not have ap-
 plied to the minister of Largo, and no other? for indeed the bro-
 ken weeks of April and May, which elapsed after her happening
 to leave Largo before the term, would have been understood to go
 for nothing.

If the maxim, *Dies inceptus pro completo habetur*, can from ana-
 logy be justly applicable to any other case, it should have in-
 fluence here; for a year's residence is in the eye of law a resi-
 dence for the chief part of the year; and in proportion, as the
 deficiency has been slight, it will be the more easily overlooked.

It is here objected, That Helen Reid did not enter to possession
 of the house at Largo till about eight or ten days or so after Whit-
 sunday 1772, and that she left it on the 4th April 1775.

At the utmost, therefore, there could be only an absence of
 fifty-one days during the whole space of three years, which being
 divided, will not make an absence of three weeks each year.

Now,

Now, the petitioners do humbly contend, that there should not be such a precise judaical construction put upon the expression, *three years residence*, as that it should be necessary to have an actual residence of every day of every one of the three years.

Yet there is, with submission, no alternative between this construction, and what the petitioners humbly conceive to be the more rational and liberal one, viz. That where the known and established residence has, upon a general view, been in any particular parish, small deficiencies of that residence are not to be regarded.

It will be considered by your Lordships, that it can make no difference whether any inconsiderable deficiency of actual residence has happened all at once, or at different periods, during the three years residence, in the sense in which the petitioners understand it. Supposing, therefore, that this poor woman had once a-quarter had occasion to leave her own house, and go out of the parish of Largo for four or five days, to receive a small pension for having nursed a gentleman's child, or to dispose of the yarn which she had spun, at a proper market, or upon any other account, would it not still have been held, that her residence was in the parish of Largo? for if that were not to be held, the consequence would be, that she must be considered as having no residence at all during these three years; and indeed, even as it is, the argument against the petitioners must go so far as to maintain, that she had no residence in Largo but for one year, because there was a deficiency of actual residence both at the beginning of the first year and at the end of the last.

But the petitioners flatter themselves, that upon reconsidering this case, which is of consequence in point of precedent, your Lordships will see good reason to be of opinion, that the proper and legal residence must be understood to be the place which, during the three years, has been the known home or domicile of the pauper.

Now it is plain, that in this case the domicile of Helen Reid was in the parish of Largo from Whitsunday 1772 to Whitsunday 1775; and that although by the melancholy event of her husband's death she left her home in the month of April, yet it still remained her house, and part of her furniture was left in it, which was afterwards sold for payment of her husband's debts, but which she was intitled to have kept in the house till the term-day, it being
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her house, her home, her legal residence till that day; and it cannot be controverted, that if she had chosen, she might have returned to it, and have lived in it till the full period of her right was expired.

But, with great submission, actual personal residence during every part and portion of the three years cannot be required; and what the petitioners must consider as a strong circumstance will be particularly attended to by your Lordships, which is, that until Whitsunday 1775 Helen Reid had her legal domicile in the parish of Largo, and had a domicile in no other parish; a summons, therefore, could not have been executed against her but at her dwelling-house or place of residence in Largo.

Neither will your Lordships be unmindful, that persons who are in such a situation as to come upon the list of poor, seldom reside for the full space of three years in one parish: so that if the expression "three years residence" is to be so very rigidly taken, it may be exceedingly difficult to apply the salutary principle established by practice, and sanctified by a solemn judgement of your Lordships; which, notwithstanding the statutory provision of *locus originis*, when that can be ascertained, is now understood to be our law.

It will also readily occur to your Lordships, that the inductive cause of making the last three years residence the rule for burdening a parish for the maintenance of a pauper, is the reasonable consideration, that the place where a person has resided for a considerable space immediately before falling into indigence should take that burden; and that it should not be necessary to go back, and make investigations as to former periods of residence in other places. It happens in this case, that the pauper had a kind of residence in the Queensferry for some years, though not immediately antecedent to the three years in which she had a house in the parish of Largo; for she went from Leslie to Largo; but it might have so happened, that she had not resided for any considerable space of time in any other parish than Largo for perhaps twenty or thirty years. And would it not have been very strange, and not a little hard, if there had been such a retrospective burden imposed?

It appears to the petitioners, that the regulation established by your Lordships must have been suggested by the act 1672, in
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which

which alone the period of three years is mentioned; and that act directs "lists to be made of the poor in each parish where they were born, and in what parishes they have *most haunted* during *the last three years.*"

That Helen Reid, during the last three years, most haunted in the parish of Largo, is *most certain*: for the petitioners do, with submission, think, that it must be by a very strict construction indeed, if she shall not be held to have had her *residence* there for the last three years. And, upon the whole of this argument, they hope, that your Lordships, upon reconsidering the case, will think, that they are contending for the most just and rational construction.

They have only one word to add, as to the expences your Lordships have found due to the parish of Dalmeny. They, with great deference, apprehend, that their making Dalmeny a party for having the question reconsidered as to the place of birth being liable, was not such a step as should subject them in any censure.

May it therefore please your Lordships, to alter your interlocutor, and to find, That the burden of maintaining the said Helen Reid, and her children, lies on the parish of Largo; and also to find, That the petitioners are not liable in any expences to the parish of Dalmeny.

According to justice, &c.

JAMES BOSWELL.